

# DOCUMENT TRANSMITTAL FORM

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|                                                                                              |                                                                                                                                                                    |                                       |
|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| Agency Name<br>Public Service Commission of South Carolina                                   | 1. Chapter Number<br>103                                                                                                                                           | 2. Date of Filing<br>December 6, 2005 |
| 3. Regulation Number<br>26 S.C. Code Ann. Regs. 103-800, <i>et. seq.</i> (1976 & Supp. 2004) | 4. Subject of Regulation<br>Amendments to 26 S.C. Code Ann. Regs. 103-800, <i>et. seq.</i> (Practice and Procedure) of the Public Service Commission's Regulations |                                       |

5. Statutory Authority

S.C. Code Ann. Section 58-3-140 (Supp. 2004)

6. Type of Filing

- ☐ NOTICE OF GENERAL PUBLIC INTEREST  
☐ NOTICE OF DRAFTING  
☒ PROPOSED REGULATION  
☐ EMERGENCY REGULATION  
☐ FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW  
☐ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW  
☐ FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

|                                                                               |                                                                        |
|-------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 5. For Additional Information, Contact<br>Jocelyn G. Boyd or David Butler     | 6. Telephone Number<br>803-896-5100                                    |
| 7. Typed Name of Official<br>Deputy Clerk and Senior Counsel,<br>respectively | 8. Signature of Official<br><i>Jocelyn Boyd</i><br><i>David Butler</i> |
| 9. Date<br>December 2, 2005                                                   |                                                                        |

| SOUTH CAROLINA STATE REGISTER USE ONLY                                                                 |                                                                                                 |
|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| 10. For publication in SR Volume ____ Issue ____<br><br>Document Number ____<br><br>Verification: ____ | OFFICIAL FILING STAMP<br><b>FILED</b><br><br>DEC 06 2005<br><br><b>S.C. LEGISLATIVE COUNCIL</b> |

Document No. \_\_\_\_\_  
**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**CHAPTER 103**  
Statutory Authority: 1976 Code Section 58-3-140

26 S.C. Code Ann. Regs. 103-800, *et. seq.* Practice and Procedure

**Preamble:**

In 2004, the General Assembly passed Act. No. 175 which restructured the Public Service Commission. This Act modified the structure of the Agency and its functions and created the Office of Regulatory Staff. Several duties of the Public Service Commission were transferred to the Office of Regulatory Staff on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-800, *et. seq.* (1976 & Supp. 2004) of the Public Service Commission's regulations is to amend Article 8 to conform to the new standards set out by Act 175 of 2004.

**Section-by-Section Discussion**

- 103-800 Paragraph A is modified to update the regulation for the date of revision.
- 103-801 The revised rule eliminates the distinction between formal and informal proceedings and renames the regulation.
- 103-804 This Section reorders the definitions into alphabetical order and conforms definitions to the standards established by Act No. 175.
- 103-805 This Section is eliminated.
- 103-811 This Section conforms regulation to provisions of Act No. 175.
- 103-813 The revision eliminates divisions of the Commission made obsolete by Act No. 175 and conforms remaining definitions to the terms provided by Act No. 175.
- 103-814 This Section was previously entitled the Office of General Counsel. The Office of General Counsel was eliminated by provisions of Act No. 175. Currently, 103-814 addresses commission meetings and is being amended by deleting the phrase "executive director" and adding the phrase "chief clerk" to conform with Act No. 175. Further, an outdated code citation is eliminated.
- 103-815 This Section is being renumbered from 103-816 to 103-815.
- 103-816 This Section was previously numbered 103-817. The revision corrects the Commission's physical address to conform with its present location and also conforms the name of the agency.
- 103-817 This Section is modified to remove the distinction between formal and informal proceedings and discusses proceedings before the commission. This Section was previously numbered 103-820.
- 103-818 This Section was previously entitled "Telephone Communications"; the "Telephone Communications" regulation is being deleted because the WATS line is not necessary due to Act No. 175. The revised 103-818 is modified to conform numbering.
- 103-819 The revision to this regulation removes the distinction between formal and informal proceedings; this Section was formerly numbered 103-830.
- 103-820 This Section was formerly numbered 103-831 and the word "formal" is eliminated.
- 103-821 This Section was previously numbered 103-832. This Section is modified to allow for electronic copies of pleadings and such hard copies as may be directed by the Commission.
- 103-822 This Section was previously numbered 103-833.
- 103-823 This Section is modified to include an e-mail address as one of the listed parameters for the application and conforms numbering. This Section was previously numbered 103-834.
- 103-824 This Section removes the distinction between formal and informal proceedings, includes an e-mail address as one of the listed parameters for the complaint and conforms numbering. This Section was previously numbered 103-835.
- 103-825 This Section was previously numbered 103-836. Additionally, this Section allows objections to petitions to intervene.

103-826 This Section was previously numbered 103-837 and conforms internal numbering.

103-827 This Section replaces the phrase "Commission Staff" with the "Office of Regulatory Staff." This Section was previously numbered 103-838.

103-828 This Section was previously numbered 103-839.

103-829 This Section conforms terminology with Act No. 175 by replacing the phrase "Executive Director" with "Chief Clerk." This revision adds response times to motions and conforms numbering. This Section was previously numbered 103-840.

103-830 This Section conforms terms to Act No. 175 by replacing "Executive Director" with "Chief Clerk." Also, this section provides an alternative method for service of complaints and petitions. This Section was previously numbered 103-841.

103-831 This Section conforms computation of time to standards set by South Carolina Rules of Procedure Rule 6 and it was previously numbered 103-842.

103-832 This Section was formerly numbered 103-850. It also conforms subpoena practice to the South Carolina Rules of Civil Procedure.

103-833 This Section replaces the phrase "Executive Director" with "Chief Clerk." Additionally, this Section was formerly numbered 103-851. This Section also adds a section on Requests for Production of Documents and Things and expands the time to respond to interrogatories. Also, this Section removes the filing requirements of answers to interrogatories with the Commission.

103-834 This Section was formerly numbered 103-852. This Section also adds "commission designee" as one who can give permission for the taking of a deposition.

103-835 This Section was formerly numbered 103-854. This revised Section deletes internal references to Commission regulations.

103-836 This Section removes the term "formal proceedings" and was formerly numbered 103-860.

103-837 This Section replaces the phrase "Executive Director" with "Chief Clerk" and removes the word "formal." This Section was formerly numbered 103-861.

103-838 This Section replaces the phrase "Executive Director" with "Chief Clerk" and this Section was formerly numbered 103-862.

103-839 This Section removes the term "formal" and was formerly numbered 103-863.

103-840 This Section was formerly numbered 103-864 and removes the term "formal."

103-841 This Section removes the term "formal" and was formerly numbered 103-865.

103-842 This Section replaces the phrase "Commission Staff" with the "Office of Regulatory Staff" and was formerly numbered 103-866.

103-843 This Section removes the term "formal" and was formerly numbered 103-867.

103-844 This Section was formerly numbered 103-868 and conforms internal numbering.

103-845 This Section removes the term "formal" and replaces the term "staff" with the phrase "Office of Regulatory Staff." This Section was previously numbered 103-869.

103-846 This Section was formerly numbered 103-870 and is modified to conform to South Carolina Rules of Evidence.

103-847 This Section was formerly numbered 103-871 and removes the term "formal."

103-848 This Section was formerly numbered 103-872.

103-849 This Section was formerly numbered 103-873.

103-850 This Section removes the term "formal" and was formerly numbered 103-874.

103-851 This Section removes the thirty-day limitation from regulation and expands the role of proposed orders. This Section was formerly numbered 103-875.

103-852 This Section replaces the phrase "Executive Director" with "Chief Clerk" and adds the availability of registered mail for service of orders. This Section was formerly numbered 103-876.

103-853 This Section was previously entitled "Data Request." The Commission Staff no longer issues data requests. The new title for this Section is Finality of Decision. The "Finality of Decision" regulation was formerly numbered 103-880. The revised Section removes the word "formal" and modifies the effective date of orders and conforms numbering.

103-854 This Section was formerly numbered 103-881.

103-855 This Section was formerly numbered 103-882 and internal numbering is modified to conform to new numbering of regulations.

103-856 This Section was formerly numbered 103-883 and internal numbering is modified to conform to new numbering of regulations.

103-857 This Section was formerly numbered 103-884.

103-858 This Section was formerly numbered 103-885.

103-859 This Section replaces the phrase "Commission Staff" with "Office of Regulatory Staff" and was formerly numbered 103-886.

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons may submit written comments to the Public Service Commission, Docketing Department, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2005-354-A. To be considered, comments must be received no later than 4:45 p.m. on January 31, 2006. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on **February 6, 2006, at 2:30 p.m.** in the Commission's Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

**Preliminary Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Need and Reasonableness:**

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION: 26 S.C. Code Ann. Regs. 103-800, *et. seq.*

Purpose: 2004 S.C. Acts No. 175 modified the structure of the Public Service Commission and its functions and created the Office of Regulatory Staff. Several duties of the Commission Staff were transferred to the Office of Regulatory Staff on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-800, *et. seq.* (1976 & Supp. 2004) is to amend Article 8 to conform to the new standards set out by Act 175 of 2004. The Commission in its restructuring is more judicial in nature. Thus, the Commission's regulations governing practice and procedure in some instances are also being revised to conform to procedures set out in the South Carolina Rules of Civil Procedure.

Legal Authority: S.C. Code Ann. Section 58-3-140 (Supp. 2004)

Plan for Implementation: The proposed amendments will take effect upon approval by the General Assembly and publication in the *State Register*.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION  
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

Due to the major restructuring of the Public Service Commission and its governing statutes, the Commission regulations should be consistent with the recent revisions in Title 58 of the South Carolina Code. Some of the proposed changes to the regulations conform existing Commission practices to the South Carolina Rules of Civil Procedure which assist practitioners who appear before the Public Service Commission.

**DETERMINATION OF COSTS AND BENEFITS:**

Although costs related to amending Article 8 are minimal, the benefits include increased efficiency in practice and procedure before the Commission and regulations that conform with Title 58 of the South Carolina Code.

**UNCERTAINTIES OF ESTIMATES:**

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The amended regulations will have no detrimental effect on the environment and public health if the regulation is not implemented.

Text:

**ARTICLE 8**

**PRACTICE AND PROCEDURE**

EDITOR'S NOTE

Regulations 103-800 to 103-885 were adopted December 31, 1976.

**SUBARTICLE 1**

**GENERAL**

**103-800. Authorization.**

A. In accordance with provisions of law, the Public Service Commission has adopted the following rules and regulations and fixed the following standards to govern the practice and procedures of parties before it, effective ~~December 31, 1976~~ January 1, 2005 (or whenever the revised regulations go into effect). All previous rules or standards of practice and procedure are hereby revoked, annulled and superseded.

B. The adoption of these rules shall in no way preclude the Public Service Commission from altering, amending or revoking them in whole or in part, or from making additions thereto, pursuant to provisions of law, upon petition of a proper party or upon its own motion.

C. The adoption of these rules of practice and procedure shall not relieve either the Commission or any party participating in proceedings before it of any duties prescribed under the laws of this State.

**103-801. ~~Jurisdiction~~ Application of Rules.**

These rules shall apply to any person ~~individual, firm, partnership, association, establishment, corporation, or governmental subdivision~~ which who participates in proceedings before the Public Service Commission ~~in formal or informal proceedings~~.

**103-802. Purpose of Rules.**

These rules are intended to define standards of proper practice before the Public Service

Commission. They are intended to insure that all parties participating in proceedings before the Commission will be accorded the procedural fairness to which they are entitled by law. These rules are further intended to promote efficiency in, and certainty of, the procedures and practices herein adopted. All parties participating in proceedings before the Commission shall assist the Commission in the implementation of these rules and regulations.

#### **103-803. Waiver of Rules.**

In any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.

#### **103-804. Definitions.**

The following words and terms, when used in the context of these rules and regulations, shall have the meanings indicated.

~~A. Commission and Commissioner. The South Carolina Public Service Commission and a Commissioner thereof, respectively.~~

~~B. Presiding Officer. A Commissioner duly designated or a hearing examiner, appointed and duly designated by the Commission, who presides at proceedings before the Commission.~~

~~C. Hearing Examiner. A member of the Commission staff, duly appointed and designated by the Commission to serve as a presiding officer for a formal proceeding before the Commission, and so serving as a presiding officer.~~

~~D. Staff Counsel. Legal Counsel of the Commission and Commission Staff.~~

~~E. Proceeding. The general process of the Commission's determination of the relevant facts and the applicable law, the consideration thereof and the action thereupon in regard to a particular subject matter within the Commission's jurisdiction, initiated by the filing of an appropriate pleading or issuance of a Commission order or rule to show cause or by the receipt of oral or written communication by the staff. A proceeding may be formal or informal.~~

~~F. Pleading. Any document filed in a proceeding before the Commission, including complaint, answer, application, protest, motion (other than an oral motion made at a formal proceeding) or petition.~~

~~G. Formal Record. The documentation pertaining to a proceeding before the Commission, including the following: the designation of the presiding officer; proofs of publication and notification; all pleadings and intermediate rulings; the transcript or official recording of hearing which shall include all evidence received or considered; a statement of matters officially noticed; all questions and offers of proof, objections and rulings thereof; proposed findings and exceptions, if any; any decision, opinion or report by the presiding officer; all staff memoranda or data submitted to the hearing officer or members of the Commission in consideration of a proceeding; and the order making final disposition of the matter.~~

~~H. Person. Any individual, partnership, corporation, association, establishment, governmental subdivision, or public or private organization of any character.~~

~~I. Party. Any person named or admitted by the Commission as a party to a formal or informal proceeding before the Commission, or properly seeking and entitled as of right to be admitted as a party to a formal or informal proceeding before the Commission.~~

~~J. Party of Record. A party in a formal proceeding before the Commission who is entitled to receive all documentary materials, pleadings, orders or other dispositions of matters relevant to the proceeding. Parties of record will include applicants, complainants, defendants, respondents, and intervenors. Parties of record may file a petition for rehearing of Commission orders, pursuant to R. 103-880 et seq. The Commission staff shall be considered a party of record for the purposes of filing and receipt of pleadings and documentary materials, data requests, and for the conduct of formal proceedings.~~

~~K. Applicant. A party on whose behalf an application is made to the Commission for any permission or authorization which the Commission may grant pursuant to statutory or other proper authority.~~

~~L. Complainant. A party who complains to the Commission of anything done, or omitted to be done, in contravention or violation of the provisions of any statute or other delegated authority administered by the Commission, or of any order, rule or regulation issued or promulgated thereunder, or any other alleged wrong within the jurisdiction of the Commission.~~

~~M. Intervenor. A party who files a petition to intervene in a proceeding before the Commission, as provided by R. 103-836, and after such petition is approved by the Commission or presiding officer. Admission as an intervenor shall not be construed as recognition by the Commission that such intervenor might be aggrieved by any order of the Commission in such proceeding.~~

~~N. Protestant. A party objecting on the ground of private or public interest to the approval of an application, petition, motion or other matter which the Commission may have under consideration. A protestant may offer sworn testimony without the privilege of cross examination of witnesses offered by other parties. A protestant desiring to become an intervenor in a proceeding before the Commission may file a petition for intervention.~~

~~O. Respondent. A party subject to any statute or other delegated authority administered by the Commission to whom an order, notice or rule to show cause is issued by the Commission instituting an investigation or a proceeding.~~

~~P. Defendant. A party subject to statute or other delegated authority administered by the Commission, or any order, rule or regulation issued or promulgated thereunder, against whom any complaint is filed.~~

~~Q. Petitioner. A party seeking relief from the Commission, and not otherwise designated herein.~~

~~R. Appearance. The act of offering sworn testimony in a formal proceeding before the Commission.~~

~~S. Representation.~~

~~(1) The act of serving as counsel for a party, or of serving as the authorized representative of a party, in a proceeding before the Commission. Representation of a party of record in a formal proceeding shall include the right to offer evidence on behalf of the party represented and to~~

~~cross-examine witnesses offered by other parties. Representation of a party other than a party of record in a formal proceeding shall consist of the right to offer evidence on behalf of the party represented without cross-examination of witnesses offered by other parties. Those persons who may act in a representative capacity are the following:~~

~~(a) An individual may represent himself or herself in any proceeding before the Commission.~~

~~(b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission. An attorney not authorized to practice before the courts of the State of South Carolina but authorized to practice before the courts of any other State may represent a party in any formal proceeding before the Commission upon association with an attorney admitted to practice before the courts of South Carolina.~~

~~(2) All persons acting in a representative capacity before the Commission shall be subject to any limitation imposed by statute or other proper authority.~~

~~T. Order. A written decision or opinion issued by the Commission representing the whole or any part of the disposition (whether affirmative, negative, injunctive or declaratory in form) of a formal proceeding before the Commission.~~

~~U. Rule. The whole or any part of a Commission statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure or practice requirements of the Commission.~~

~~V. Rulemaking. The Commission process for the formulation, amendment or repeal of a rule.~~

~~W. Rule to Show Cause. An order issued by the Commission instituting a formal proceeding against a person under the Commission's statutory authority. Such rule shall set forth the grounds for such action, and will contain a statement of the particulars and matters concerning which the Commission seeks to inquire and which shall be deemed to be tentative and for the purpose of framing issues for consideration and decision of the Commission in the proceeding. Such rule shall require that the respondent named respond in writing, as the Commission may direct.~~

~~X. Data Request.~~

~~(1) A written request for information made by Commission staff and directed to another party or parties in the same proceeding. The Commission staff shall be considered a party for the submission and receipt of data requests.~~

~~(2) The Commission staff shall submit the original and two copies of the data request to the Executive Director who shall send a copy to the party from whom the information is sought. The staff shall mail a copy of the data request to each party of record in the proceeding.~~

~~(3) The date for response to data requests shall be established therein and shall depend upon the nature, complexity and quantity of information sought and the scheduled hearing date. A data request may not be submitted less than ten (10) days prior to the hearing date set for a formal proceeding.~~

~~(4) Submission of a data request less than ten (10) days prior to a hearing or during the course of a hearing may be made only by agreement of the parties or at the discretion of the Commission.~~



~~(5) A party to whom a data request is submitted and from whom a response is required may file written objections to any portion of the data request. Such written objections shall state clearly the number of the item of information sought and shall give a concise statement of the reasons for the objections. After consideration of the data request and the objections, the Commission will make a determination whether a complete response shall be required to the item or items to which objections were made.~~

#### ~~Y. Public Records.~~

~~(1) Those official items of information within the files of the Commission which are available for inspection by the public. Public records include:~~

~~(a) Applications, complaints, petitions and other papers seeking Commission action;~~

~~(b) Financial, statistical and other reports to the Commission; rates and rate schedules; any other filings and submittals to the Commission in compliance with the requirement of any statute, Commission order, rule or regulation;~~

~~(c) All pleadings, notices, depositions and formal records in proceedings before the Commission;~~

~~(d) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence;~~

~~(e) All Commission orders, notices, findings, opinions, determinations, and other actions in proceedings and all Commission minutes which have been approved and filed with the Executive Director;~~

~~(f) All Commission correspondence relating to any furnishing of data or information;~~

~~(g) Commission correspondence relating to the interpretation or applicability of any statute, rule, regulation or order issued or administered by the Commission and letters of opinion on those subjects signed by Staff Counsel and sent to others than the Commission, a Commissioner, or any of the Commission's staff;~~

~~(h) Copies of all filings, certifications, pleadings, records, briefs, orders, judgments, decrees and mandates in court proceedings in which the Commission is a party and all correspondence with the Courts or clerks of court.~~

~~(2) The term Public Records does not include any information specifically exempted by statute or Commission order.~~

~~(3) Public Records are available for public inspection at the offices of the Commission, during the Commission's business hours. Copies of public records may be made available by the Executive Director for a reasonable charge.~~

#### ~~Z. Notice of Filing.~~

~~(1) A statement prepared by the Executive Director upon the filing of a pleading which initiates a formal proceeding, and which is provided to the party submitting the pleading. The Notice of Filing shall be published pursuant to R. 103-821C and shall otherwise be processed according to the Commission's Rules and Regulations concerning specific persons within the Commission's~~

jurisdiction.

~~(2) The Notice of Filing shall contain a brief description of the pleading, reference to the statutory or other legal authority under which the pleading was filed, and the manner in which interested persons may file petitions to intervene or protests, and the return date.~~

~~AA. Notice of Hearing.~~

~~(1) A statement prepared by the Executive Director which provides certain information relative to the public hearing scheduled in a formal proceeding before the Commission, and submitted to all parties in that proceeding. The Notice of Hearing shall be published, pursuant to applicable provisions of law.~~

~~(2) A Notice of Hearing shall include the following items of information:~~

~~(a) A statement of the date, time, and place of the public hearing;~~

~~(b) A reference to the legal authority under which the proceeding was instituted;~~

~~(c) A description of the subject and issues involved, and, in a rulemaking proceeding, the terms or substance of the proposed rule.~~

~~(3) At its discretion, the Commission may consolidate a Notice of Hearing with a Notice of Filing, and issue a Notice of Filing and Hearing, if the public interest so requires.~~

~~BB. Administrative Law Judge. An attorney appointed by the Commission and approved by the Attorney General of South Carolina that is responsible for presiding over certain rate hearings.~~

~~CC. Executive Assistant to Commissioners. The responsibilities of the Executive Assistant to Commissioners are to advise the Commissioners and to serve as a liaison among the Commission, the Commission Staff, the Press, members of the public and the regulated companies.~~

A. Applicant. A party on whose behalf an application is made to the Commission for any permission or authorization which the Commission may grant pursuant to statutory or other proper authority.

B. Commission and Commissioner. The South Carolina Public Service Commission and a Commissioner thereof, respectively.

C. Complainant. A party who complains to the Commission of anything done, or omitted to be done, in contravention or violation of the provisions of any statute or other delegated authority administered by the Commission, or of any order, rule or regulation issued or promulgated thereunder, or any other alleged wrong within the jurisdiction of the Commission.

D. Defendant. A party subject to statute or other delegated authority administered by the Commission, or any order, rule or regulation issued or promulgated thereunder, against whom any complaint is filed.

E. Formal Record. The documentation pertaining to a proceeding before the Commission, including the following: the designation of the presiding officer; proofs of publication and notification; all pleadings and intermediate rulings; the transcript or official recording of hearing

which shall include all evidence received or considered; a statement of matters officially noticed; all questions and offers of proof, objections and rulings thereof; proposed findings and exceptions, if any; any decision, opinion or report by the presiding officer; all staff memoranda or data submitted to the hearing officer or members of the Commission in consideration of a proceeding; and the order making final disposition of the matter.

F. Hearing Examiner. A member of the Commission staff, duly appointed and designated by the Commission to serve as a presiding officer for a ~~formal~~ proceeding before the Commission, and so serving as a presiding officer.

G. Hearing Officer. An attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience employed by the Commission to hear and determine procedural motions or other matters not determinative of the merits of the proceedings and made prior to the hearing. At the hearing, a hearing officer shall make all rulings on nondispositive motions and objections. The hearing officer has full authority, subject to being overruled by the Commission, to rule on questions concerning the conduct of the case and the admission of evidence but may not participate in the determination on the merits of the case. If qualified, a Commission staff attorney may serve as a hearing officer.

H. Intervenor. A person who files a petition to intervene in a proceeding before the Commission, as provided by R. 103-83625, and after such petition is approved by the Commission or presiding officer. Admission as an intervenor shall not be construed as recognition by the Commission that such intervenor might be aggrieved by any order of the Commission in such proceeding.

#### I. Notice of Filing.

(1) A statement prepared by the ~~Executive Director~~ Chief Clerk upon the filing of a pleading which initiates a ~~formal~~ proceeding, and which is provided to the party submitting the pleading. The Notice of Filing shall be published pursuant to R. 103-821CA and shall otherwise be processed according to the Commission's Rules and Regulations concerning specific persons within the Commission's jurisdiction.

(2) The Notice of Filing shall contain a brief description of the pleading, reference to the statutory or other legal authority under which the pleading was filed, and the manner in which interested persons may file petitions to intervene or protests, and the return date.

#### J. Notice of Hearing.

(1) A statement prepared by the ~~Executive Director~~ Chief Clerk which provides certain information relative to the public hearing scheduled in a ~~formal~~ proceeding before the Commission, and submitted to all parties in that proceeding. The Notice of Hearing shall be published, pursuant to applicable provisions of law.

(2) A Notice of Hearing shall include the following items of information:

(a) A statement of the date, time, and place of the public hearing;

(b) A reference to the legal authority under which the proceeding was instituted;

(c) A description of the subject and issues involved, and, in a rulemaking proceeding, the terms or substance of the proposed rule.

(3) At its discretion, the Commission may consolidate a Notice of Hearing with a Notice of Filing, and issue a Notice of Filing and Hearing, if the public interest so requires.

K. Order. A written decision or opinion issued by the Commission representing the whole or any part of the disposition (whether affirmative, negative, injunctive or declaratory in form) of a formal proceeding before the Commission.

L. Party or Party of Record. A party in a formal proceeding before the Commission who is entitled to receive all documentary materials, pleadings, orders or other dispositions of matters relevant to the proceeding. Parties of record will include applicants, complainants, defendants, respondents, and intervenors. Parties of record may file a petition for rehearing of Commission orders, pursuant to R. 103-88053 et seq. The Commission staff Office of Regulatory Staff shall be considered a party of record for the purposes of filing and receipt of pleadings and documentary materials, data requests, and for the conduct of formal proceedings.

M. Person. Any individual, partnership, corporation, association, establishment, limited liability companies, limited partnership, entities, governmental subdivision, or public or private organization of any character.

N. Petitioner. A party seeking relief from the Commission, and not otherwise designated herein.

O. Pleading. Any document filed seeking relief in a proceeding before the Commission, including complaint, answer, application, protest, request, motion (other than an oral motion made at during a formal proceeding) or petition.

P. Presiding Officer. A Commissioner or a hearing examiner appointed and duly designated by the Commission, who presides at proceedings before the Commission.

Q. Proceeding. The general process of the Commission's determination of the relevant facts and the applicable law, the consideration thereof and the action thereupon in regard to a particular subject matter within the Commission's jurisdiction, initiated by the filing of an appropriate pleading or issuance of a Commission order or rule to show cause or by the receipt of oral or written communication by the staff. A proceeding may be formal or informal.

R. Protestant. An individual objecting on the ground of private or public interest to the approval of an application, petition, motion or other matter which the Commission may have under consideration. A protestant may offer sworn testimony without the privilege of cross-examination of witnesses offered by other parties. A protestant desiring to become an intervenor in a proceeding before the Commission may file a petition for intervention.

S. Public Records.

(1) Those official items of information within the files of the Commission which are available for inspection by the public. Public records include:

(a) Applications, complaints, petitions and other papers seeking Commission action;

(b) Financial, statistical and other reports to the Commission; rates and rate schedules; any other filings and submittals to the Commission in compliance with the requirement of any statute, Commission order, rule or regulation;

(c) All pleadings, notices, depositions and formal records in proceedings before the Commission;

(d) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence;

(e) All Commission orders, notices, findings, opinions, determinations, and other actions in proceedings and all Commission minutes which have been approved and filed with the ~~Executive Director~~ Chief Clerk;

(f) All Commission correspondence relating to any furnishing of data or information;

(g) Commission correspondence relating to the interpretation or applicability of any statute, rule, regulation or order issued or administered by the Commission and letters of opinion on those subjects signed by Staff Counsel and sent to others than the Commission, a Commissioner, or any of the Commission's staff;

(h) Copies of all filings, certifications, pleadings, records, briefs, orders, judgments, decrees and mandates in court proceedings in which the Commission is a party and all correspondence with the Courts or clerks of court.

(2) The term Public Records does not include any information specifically exempted by statute or Commission order.

(3) Public Records are available for public inspection at the offices of the Commission, during the Commission's business hours. Copies of public records may be made available by the ~~Executive Director~~ Chief Clerk for a reasonable charge.

#### T. Representation.

(1) The act of serving as counsel for a party, or of serving as the authorized representative of a party, in a proceeding before the Commission. Representation of a party of record in a formal proceeding shall include the right to offer evidence on behalf of the party represented and to cross-examine witnesses offered by other parties. ~~Representation of a party other than a party of record in a formal proceeding shall consist of the right to offer evidence on behalf of the party represented without cross-examination of witnesses offered by other parties.~~ Those persons who may act in a representative capacity are the following:

(a) An individual may represent himself or herself in any proceeding before the Commission.

(b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission. An attorney not authorized to practice before the courts of the State of South Carolina but authorized to practice before the courts of any other State may represent a party in any formal proceeding before the Commission upon association with an attorney admitted to practice before the courts of South Carolina.

(2) All persons acting in a representative capacity before the Commission shall be subject to any limitation imposed by statute or other proper authority.

U. Respondent. A party subject to any statute or other delegated authority administered by the Commission to whom an order, notice or rule to show cause is issued by the Commission

instituting an investigation or a proceeding.

V. Rule. The whole or any part of a Commission statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure or practice requirements of the Commission.

W. Rulemaking. The Commission process for the formulation, amendment or repeal of a rule.

X. Rule to Show Cause. An order issued by the Commission instituting a formal proceeding against a person under the Commission's statutory authority. Such rule shall set forth the grounds for such action, and will contain a statement of the particulars and matters concerning which the Commission seeks to inquire and which shall be deemed to be tentative and for the purpose of framing issues for consideration and decision of the Commission in the proceeding. Such rule shall require that the respondent named respond in writing, as the Commission may direct.

Y. Staff Counsel. Legal Counsel of the Commission and Commission Staff.

**~~103-805. Appearance Bond.~~**

~~(Statutory Authority: S.C. Code Section 58-3-140)~~

~~Applications that are filed with the Commission that may require a hearing shall be accompanied by an appearance bond in the amount of two hundred fifty dollars. The appearance bond is required to guarantee the applicant's appearance at the public hearing, if any, to be held in connection with its application. The appearance bond will be returned to the applicant if the applicant appears at the public hearing.~~

## **SUBARTICLE 2**

### **OPERATION AND ORGANIZATION OF THE COMMISSION**

**103-810. Functions of the Commission.**

The Commission, as provided for by the South Carolina Constitution and as vested with power and jurisdiction by the South Carolina General Assembly, performs the following general functions:

A. Regulation and supervision of privately-owned electric utilities as to rates, charges, services, facilities, practices, accounting procedures, the purchase, sale or lease of utility property and the issuance of securities; and the administration of the Rural Electric Cooperative Act, relative to territorial boundaries. S. C. Code Ann., Section 58-27-10 et. seq. (1976), as amended; and R.103-300, et. seq.

B. Regulation and supervision of rates and charges, services, facilities, practices and accounting procedures of all intrastate privately-owned gas, water and sewerage companies; and administration of the Gas Safety Act of 1970. S. C. Code Ann., Section 58-5-10 et. seq., (1976), as amended; R.103-400 et. seq.; R.103-500 et. seq., R.103-700, et. seq.

C. Regulation and supervision of rates and charges, services, facilities, practices and accounting procedures for all privately and publicly-owned telephone and telegraph companies within the State. S. C. Code Ann., Section 58-9-10 et. seq., (1976), as amended; R.103-600 et. seq.

D. Regulation and supervision of rates and charges, services, facilities, practices and accounting procedures of all radio common carriers within the State. S. C. Code Ann., Section 58-11-10 et seq., (1976).

E. Regulation and supervision of for hire motor carriers of freight and passengers relative to rates, schedules, rules, charges and facilities; issuance and supervision of the administration of Certificates of Public Convenience and Necessity; administration of Registration and Safety Act of 1970. S. C. Code Ann., Section 58-23-10 et. seq., (1976), as amended; R.103-100 et. seq.

F. Regulation and supervision of express and telegraph companies. S. C. Code Ann. Section 58-9-2310 et. seq. (1976), as amended.

G. Regulation and supervision of rates, services, charges, schedules, and facilities of railroads and railways. S. C. Code Ann., Section 58-15-10 et. seq. (1976), as amended; R.103-1 et. seq.

#### **103-811. Commissioners.**

The membership of the Commission is composed of seven Commissioners, each elected for a term of four years by the South Carolina General Assembly upon nomination of the ~~S.C. Public Service Commission Merit Selection Panel~~ State Regulation of Public Utilities Review Committee, one from each of six Commission Districts and one at-large, pursuant to S.C. Code Ann., Section 58-3-20 (~~Cum. Supp.~~ 1976).

Beginning in 2004, the members of the Public Service Commission must be elected to staggered terms. In 2004, the members representing the second, fourth, and sixth congressional districts must be elected for terms ending on June 30, 2006, and until their successors are elected and qualify. In 2004, the members representing the first, third, and fifth congressional districts and the State-at-large must be elected for terms ending on June 30, 2008, and until their successors are elected and qualify. Thereafter, members representing the first, third, and fifth congressional districts and the State-at-large must be elected to terms of four years and until their successors are elected and qualify. Thereafter, members representing the second, fourth, and sixth congressional districts must be elected to terms of four years and until their successors are elected and qualify.

#### **103-812. Chairman and Vice Chairman.**

The Commission will elect one of their number chairman and another of their number vice-chairman.

#### **103-813. The Commission Staff.**

The Commission is authorized and empowered to employ a chief clerk and deputy clerk; a commission attorney and assistant commission attorneys; hearing officers; hearing reporters; and such other professional, administrative, technical, and clerical personnel as the commission determines to be necessary in the proper discharge of the commission's duties and responsibilities as provided by law.

~~The staff of the Commission, as authorized pursuant to S.C. Code Ann., Section 58-3-60 (1976), as amended, functions to provide the technical, administrative, and clerical assistance to the Commission to enable the Commission to perform its statutory functions. The Commission staff consists of three divisions, the Administration Division, the Transportation Division, and the~~

~~Utilities Division, all under the administration of the Office of the Executive Director.~~

~~A. The Administration Division. The Administration Division, under the supervision of the Executive Director of the Commission, maintains formal control of the dockets of all proceedings before the Commission, maintains the official Hearing Calendar, notifies parties of hearing dates for formal proceedings, administers personnel programs of the Commission, supervises preparation and operation of the Commission's budget, supervises research programs, receives and makes initial disposition of public inquiries, and performs other duties designed to insure the administrative efficiency of the Commission. The Administration Division is composed of the Administrative Department, Office of General Counsel, Research Department and the Accounting Department.~~

~~B. The Transportation Division. The Transportation Division, under the supervision of the Director of the Transportation Division, is divided into five (5) departments, designed to assist the Commission in the regulation and supervision of the operation of motor vehicles and railroads used in the business of transporting persons and property for compensation in the State. The departments of the Transportation Division are: the Licensing Department, the Rates Department, the Law Enforcement and Safety Department, the Registration Department, and the Rails and Rail Safety Department. Each department functions under the direction of a chief.~~

~~C. The Utilities Division. The Utilities Division, under the supervision of the Director of the Utilities Division, is divided into four (4) departments, each designed to assist the Commission in performing those statutory regulatory functions described in R. 103-810, pertaining to public utilities, electric utilities, telephone and telegraph companies, express and telegraph companies, and radio common carriers. The departments of the Utilities Division are: the Gas Department, the Electric Department, the Telecommunications Department, and the Water and Wastewater Department. Each department functions under the direction of a chief.~~

**~~103-814. Office of General Counsel.~~**

~~The Office of General Counsel, consisting of the Commission's legal staff, is appointed by the Commission and approved by the Attorney General of South Carolina and has the following functions:~~

~~A. Represent and appear for the people of the State and the Commission in all actions and proceedings involving any question of general and public interest within the jurisdiction of the Commission and, if directed to do so by the Commission, intervene, if possible, in any action or proceeding in which any such question is involved;~~

~~B. Commence, prosecute and expedite the final determination of all actions and proceedings directed or authorized by the Commission;~~

~~C. Advise the Commission and each Commissioner, when so requested, in regard to all matters connected with powers and duties of the Commission and the members thereof;~~

~~D. Generally perform all duties and service as attorney to the Commission which the Commission may require of it.~~

**~~103-8154. Commission Meetings.~~**



Formal meetings of the Commission are held on a weekly basis, or at the call of the chairman or at the call of a majority of the Commission, for the purposes of formulating decisions, composing orders, planning and coordinating the work of the Commission, and conferring with the Commission staff. The ~~Executive Director~~ Chief Clerk shall be responsible for the arrangement of the agenda of matters to be considered at Commission meetings. All Commission meetings and executive sessions are conducted in accordance with the terms of S.C. Code Ann., Section 30-4-10 et. seq. (~~Cum. Supp. 1986~~).

**103-8165. Office Hours.**

The offices of the Commission will be open for business daily during the hours between 8:15 A. M. and 4:45 P. M., Monday through Friday, subject to the observance of State holidays.

**103-8176. Written Correspondence.**

All written communications should be directed to the following address:

The ~~South Carolina~~ Public Service Commission of South Carolina

Post Office Drawer 11649

~~111 Doctor's Circle~~

Columbia, South Carolina 29211

Or hand-delivered to the Commission's street address:

Synergy Business Park

101 Executive Center Drive

Columbia, South Carolina 29210-8411

**~~103-818. Telephone Communications.~~**

~~The Commission subscribes to a wide area telephone service (WATS) line for the receipt of complaints from users of the services of regulated entities and for the transaction of Commission business. The Commission's WATS line is available for intrastate usage. The WATS line number will be prominently displayed in the published telephone directories within the State of South Carolina.~~

### SUBARTICLE 3

### PROCEEDINGS

**103-82017. ~~Informal Proceedings.~~**

A. ~~Nature of Informal Proceedings. When permitted by law, informal proceedings for the purposes of resolving complaints or inquiries or for the purposes of gathering information, in matters arising under the jurisdiction of this Commission, may be conducted by Commission staff~~

~~members, or one or more Commissioners, without the transcription of testimony or the development of a formal record. Informal proceedings will not be utilized for any rate-making proceedings or other matters where hearings are required by law. If required by law and upon filing of a pleading as set forth in R. 103-821BA, proceedings for the purpose of rulemaking, ratemaking, licensing, determining rights, duties, or privileges of any party, and undertaking an official inquiry for the purposes of gathering information or making determinations, which fall under the jurisdiction of the Commission, shall be conducted by one or more Commissioners, or by a hearing examiner through the development of a formal record.~~

#### B. Initiation of Informal Proceedings.

~~(1) All informal proceedings shall be initiated by forwarding a written communication to the Executive Director at his business offices at the Commission as designated herein, which shall show the information required below; or by oral communication during normal business hours with a Commission staff employee or employees designated by the Executive Director who shall transcribe the following information on the appropriate Commission form:~~

~~(a) The name and address of the party making the complaint or request and the name and address of his attorney, if he is represented.~~

~~(b) The name and address of the party about whom the complaint or request is made.~~

~~(c) A concise, cogent statement of the factual situation surrounding the complaint or request.~~

~~(d) A concise statement of the relief sought, if any.~~

~~(2) Each such communication shall be designated by Commission staff as a "request" or "complaint".~~

~~(1) All proceedings shall be initiated by filing with the Executive Director **Chief Clerk** at his business offices at the Commission an original and ten copies, as determined by the Commission, of an appropriate pleading unless otherwise provided, as designated in R. 103-83019, et seq.~~

~~(2) The Executive Director **Chief Clerk** may refuse to accept for filing any pleading which does not conform to the rules of the Commission, and shall mail written notice to the party or his authorized representative within ten days after receipt, stating why it has not been accepted for filing.~~

#### C. Conduct of Informal Proceedings.

~~(1) Where permitted by statute, all complaints and requests containing the information designated in R. 103-820B will be processed pursuant to R. 103-820 unless a formal proceeding is initiated pursuant to R. 103-821B.~~

~~(2) Complaints or requests made by oral communication will be processed by the appropriate staff employee in an oral or written manner designed to reach the most expeditious resolution of the matter. The staff member shall offer the person making the complaint the option of filing a written complaint which shall be processed according to R. 103-820C(3).~~

~~(3) Each written complaint or request filed by a party, shall be dated upon receipt, and shall be assigned an appropriate file or complaint number by Commission staff, and all subsequent~~

correspondence will refer to that file number. After filing, a copy of the complaint or request, or a concise summarization thereof, will be forwarded by Commission staff within 14 days to the party, if any, about whom the complaint or request is made. That party will respond with a brief explanation to each factual statement in the complaint or request. This response shall be mailed to the Commission within 14 days, unless otherwise specified, and a copy of such response shall be forwarded through the mail by the Commission staff to the party making the complaint or request.

(4) Unless a conference is requested by one of the parties, all informal proceedings will be conducted by the Commission staff through written correspondence, or oral communication, and all parties will be sent copies of any written correspondence and will be kept advised of any oral communication between the parties or their counsel. The object of informal proceedings shall be to obtain a fair settlement or resolution, or response, to any complaint or request through agreement or action by the parties.

(5) If any of the parties or Commission staff so requests, and it appears to the Commission staff member assigned to the informal proceeding that there is a probability of beneficial results to be derived therefrom, a conference may be directed by the Commission staff member to be held at an appropriate location, and all parties will be directed to appear. Due notice, not less than five days prior to the conference, unless otherwise agreed by all parties and Commission staff, will be given all parties of the time and place for the conference and all parties will be prepared to discuss fully the factual issues, and the possible settlement, resolution, or responses that are available to the parties. All parties shall strive to obtain a fair settlement or resolution at such conference and the parties shall reduce to writing any agreement, regarding settlement or action to be taken, at the conclusion of the conference. The agreement, if any, shall be signed by all parties.

D. Final Disposition of Informal Proceedings. Informal proceedings will be concluded when the parties reach agreement, or resolve any complaints, questions, or problems in a reasonable fashion. Any agreements reached will be reduced to writing in every case, with copies sent to all parties, and filed in the Commission records. If no agreement is reached, or resolution of a complaint achieved, informal proceedings will be concluded by written notification from Commission staff to all parties that no agreement or resolution has been reached, and that continuation of such informal proceedings would not appear likely to achieve such agreement or resolution. This notification will advise all parties that they may initiate formal proceedings before the Commission on the complaint or request pursuant to these rules. Staff, upon request of any of the parties, may file written certification with the Executive Director, with the original complaint or request attached, stating that informal proceedings have been concluded without resolution and that the designated parties request initiation of formal proceedings as if a pleading had been filed pursuant to R. 103-821B.

#### **103-821. Formal Proceedings.**

A. Nature of Formal Proceedings. If required by law and upon filing of a formal pleading as set forth in R. 103-821B, formal proceedings for the purpose of rulemaking, ratemaking, licensing, determining rights, duties, or privileges of any party, and undertaking an official inquiry for the purposes of gathering information or making determinations, which fall under the jurisdiction of the Commission, shall be conducted by one or more Commissioners, or by a hearing examiner through the development of a formal record.

#### **B. Initiation of Formal Proceedings.**

~~(1) All formal proceedings shall be initiated by filing with the Executive Director at his business offices at the Commission one original and five copies of an appropriate pleading unless otherwise provided, as designated in R. 103-830, et seq.~~

~~(2) The Executive Director may refuse to accept for filing any pleading which does not conform to the rules of the Commission, and shall mail written notice to the party or his authorized representative within ten days after receipt, stating why it has not been accepted for filing.~~

### C. Conduct of ~~Formal~~ Proceedings.

(1) All pleadings initiating ~~formal~~ proceedings shall be dated upon receipt and shall be assigned a docket number after filing, and all subsequent pleadings or correspondence shall refer to that docket number. ~~Formal~~ Pleadings will be captioned in accordance with R. 103-83019, et seq., and shall be processed pursuant to these rules.

(2) The ~~Executive Director~~ Chief Clerk after filing of the pleadings shall give the Commission notice of such filing at the next regular meeting of the Commission. Where provided by law, any ~~formal~~ proceeding initiated under these rules may be ~~dismissed~~ disposed of without hearing by Order of the Commission within 14 days after the pleading has been accepted for filing, upon the written opinion of the Commission that the pleading on its face shows that a hearing is not necessary, in the public interest, or for the protection of substantial rights.

(3) After any pleading has been accepted for filing, the ~~Executive Director~~ Chief Clerk may:

(a) Serve the pleadings, as required, in accordance with R.103-84130, or within fourteen (14) days, provide the party filing the pleading a Notice of Filing, and, where required by law, the party at its own expense shall publish such notice one time in newspapers having general circulation in the State, or, if applicable, in newspapers having general circulation in the party's service area. Except for good cause shown, proof of publication must be filed on or before the return date. The ~~Executive Director~~ Chief Clerk, pursuant to other rules of the Commission, may require that the Notice of Filing be mailed to customers and other persons and a certificate of mailing be filed on or before the return date.

(b) Fix a date for hearing, as soon as practicable, and when a date is available on the docket calendar. If the hearing date has not been included in the Notice of Filing, the ~~Executive Director~~ Chief Clerk shall prepare a Notice of Hearing, and shall forward by certified mail such Notice of Hearing to all parties. Proof of mailing must be placed in the formal record.

(c) Assign a time and place for any public hearing necessary in the conduct of any ~~formal~~ proceeding. The ~~Executive Director~~ Chief Clerk shall likewise cause the pleadings to be served pursuant to these rules or issue written notice of the filing of pleadings which shall be published pursuant to law, and notice of the hearing date assigned for the conduct of any formal proceeding, as provided by law.

(d) Require from a person filing a pleading a letter incorporating a statement presenting the number of witnesses the person expects to offer in the proceeding and an estimate of the time required for the presentation of testimony and exhibits.

(4) Public hearings in the conduct of ~~formal~~ proceedings shall be held pursuant to R. 103-86036, et seq.

D. Final Disposition of ~~Formal~~ Proceedings. ~~Formal~~ Proceedings shall be concluded upon the issuance of an order by the Commission or upon a settlement or agreement reached by all parties to the ~~formal~~ proceedings and formally acknowledged by the Commission by issuance of an order.

**103-82218. Rulemaking proceedings.**

A. Nature of Rulemaking Proceedings. When permitted by law, and upon the filing of a pleading, pursuant to R. 103-821B, formal proceedings for the purpose of rulemaking shall be conducted by one or more Commissioners or by a hearing examiner through the development of a formal record.

B. Initiation of Rulemaking Proceedings. Rulemaking proceedings shall be initiated by the process identified in R. 103-8217B.

C. Conduct of Rulemaking Proceedings.

(1) Pleadings filed with the Commission initiating rulemaking proceedings shall be processed as in ~~formal~~ proceedings, pursuant to R. 103-8217C(1) and (2).

(2) General notice of proposed rulemaking proceedings shall be made in accordance with applicable provisions of law.

(3) The Commission shall provide an opportunity to interested parties for participation in the rulemaking proceeding through submission of written data, views or arguments with or without opportunity for oral presentation.

D. Final Disposition of Rulemaking Proceedings. Rulemaking proceedings shall be concluded upon the issuance of an order by the Commission issuing, amending, or repealing a rule or rules, and containing a concise general statement of the basis and purpose of such rule or rules. Publication of such rule or rules shall be made in accordance with applicable provisions of law.

## **SUBARTICLE 4**

### **PLEADINGS**

**103-83019. General Contents of Pleadings.**

All pleadings in ~~formal~~ proceedings before the Commission to which docket numbers have been assigned shall prominently display such docket numbers. All pleadings shall also include the following information:

A. The legal name and address of each person by whom such pleading is filed;

B. The full name and address of the authorized representative of the person filing the pleading;

C. A concise and cogent statement of the facts such person is prepared to present to the Commission;

D. A statement identifying the specific relief sought by the person filing the pleading.

### **103-83120. General Form of Pleadings.**

All pleadings filed in ~~formal~~ proceedings before the Commission should be typewritten on paper cut or folded to letter size (8 to 8 1/2 inches wide by 10 1/2 to 11 inches long) with a left-hand margin not less than 1 1/2 inches wide and other margins not less than 1 inch wide. The impression shall be on one side of the paper only.

### **103-83221. Copies of Pleadings.**

Pleadings shall be filed in one original and ~~ten~~ copies, as determined by the Commission, unless otherwise specified by the ~~Division Director~~ Chief Clerk. In addition, where practicable, an electronic copy of the pleadings shall be served on the Chief Clerk and all parties according to such procedures as may be directed by the Commission. Mimeographed or photocopied copies will be accepted as typewritten, provided all copies are clearly legible.

### **103-83322. Signature and Verification.**

All pleadings filed with the Commission shall be signed. The signature of the person, or its authorized representative, submitting the pleading, shall constitute an admission that such person or representative has read the pleading and knows the contents thereof, and, if the signatory is acting in a representative capacity, that such signatory has the capacity and authority specified therein. A verification under oath shall be required if facts are alleged to be true within the knowledge of the person filing the pleading.

### **103-83423. Applications.**

Applications are submitted to the Commission for any authorization or permission which the Commission is empowered to grant under its statutory authority, including applications for establishment or adjustment of rates and charges.

A. Content of Applications. Applications shall state clearly and concisely the authorization or permission sought, and shall refer to the specific statutory provision or other authority under which Commission authorization or permission is sought. Applications shall further set forth the following information:

- (1) The precise legal name of the applicant, which shall indicate whether the applicant is a partnership, corporation, association, establishment, governmental subdivision, or other public or private organization.
- (2) The name, title, address, e-mail address, and telephone number of the person to whom correspondence or communications relative to the application is to be addressed.
- (3) The following data, in general rate establishment or adjustment applications, attached as exhibits and developed for a historic twelve-month test period unless otherwise directed:
  - (a) Balance sheet;
  - (b) Profit and loss statement;
  - (c) Accounting and pro forma adjustments;

- (d) Computation of proposed increase or decrease;
- (e) Effect of proposed increase or decrease to include copies of present and proposed tariffs;
- (f) Statement of fixed assets and depreciation reserve;
- (g) Rates of return on rate base and on common equity.

(4) All other information required by statute or by the Commission's Rules and Regulations under which a specific type of application is filed, or as may be required by the Commission in a particular proceeding.

B. Form of Applications. Except where otherwise prescribed by the Rules and Regulations of the Commission under which a specific type of application is filed, applications shall conform to the requirements of R. 103-83019 through R. 103-83322.

#### **103-83524. Complaints.**

Any person complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission, may file a written complaint with the Commission, requesting a ~~formal~~ proceeding.

A. Contents of Complaints. A written complaint filed with the Commission shall contain the following information:

- (1) The name, address, ~~e-mail address~~, and telephone number of the person making the complaint and of his authorized representative, if he is represented.
- (2) The name and address of the person about whom the complaint is made.
- (3) A concise and cogent statement of the factual situation surrounding the complaint. If a complaint relates to an act, rule, regulation or order administered or issued by the Commission, or to a provision in a tariff or contract on file with the Commission, the act, rule, regulation, order, tariff or contract should be specifically identified in the complaint.
- (4) A concise statement of the nature of the relief sought.

B. Form of Complaints. A complaint filed pursuant to this section shall conform to the requirements of R. 103-83019 through R. 103-83322.

C. Joinder of Complaints. Two or more grounds of complaint concerning the same subject or set of facts may be included in one complaint, but should be separately stated and numbered. Two or more complainants may join in one complaint if their respective causes of complaint are against the same defendant or defendants, and if they involve substantially the same purpose, subject or set of facts.

#### **103-83625. Petitions.**

Petitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority. Petitions

which may be filed include: Petition for Rulemaking, Petition for a Declaratory Order, Petition to Intervene, Petition for Rehearing or Reconsideration, and Petition for a Rule to Show Cause.

A. Content of Petitions. Petitions shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought. Petitions shall cite by appropriate reference the statutory provision or other authority relied upon for relief. The following requirements are applicable to specific types of Petitions:

(1) A Petition for Rulemaking shall set forth clearly and concisely:

- (a) The petitioner's interest in the subject matter;
- (b) The specific rule, amendment, waiver or repeal requested;
- (c) The statutory provision or other authority therefore;
- (d) The purpose of, and the grounds requiring, the proposed rulemaking.

(2) A Petition for Declaratory Order to determine applicability of any statute or of any rule or order of the Commission shall state clearly and concisely:

- (a) A full disclosure of the petitioner's interest;
- (b) The uncertainty which is the subject of the petition;
- (c) The statutory provision or other authority involved;
- (d) A complete statement of the facts prompting the petition.

(3) A Petition to Intervene in a formal proceeding before the Commission shall set forth clearly and concisely:

- (a) The facts from which the nature of the petitioner's alleged right or interest can be determined;
- (b) The grounds of the proposed intervention;
- (c) The position of the petitioner in the proceeding.

(4) A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order;
- (c) The statutory provision or other authority upon which the petition is based. Objections to a Petition to Intervene shall be filed with the Commission within ten days of receipt of the Petition to Intervene.

B. Form of Petitions. With the following exception for Petitions to Intervene, all petitions shall conform to the requirements of R. 103-830<sup>19</sup> through R. 103-833<sup>22</sup>. Handwritten Petitions to Intervene may be accepted by the Commission, if legible.



### **103-83726. Answers.**

Answers are submitted to the Commission in response to complaints and petitions, and to Rules to Show Cause issued by the Commission. Answers are not required to Petitions for Rehearing or Reconsideration.

#### **A. Content of Answers.**

(1) Answers shall be drawn so as to advise fully and completely the Commission and any party as to the nature of the defense. Answers shall admit or deny, specifically and in detail, each material allegation of the pleading answered, and shall state clearly and concisely the facts and law relied upon.

(2) In an answer to a Rule to Show Cause, mere general denials of the allegations contained in the rule which are unsupported by specific facts will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by law, on the ground that that answer has raised no issue requiring a hearing or further proceeding.

B. Form of Answers. Except as provided in R. 103-837A26 all answers shall conform to the requirements of R. 103-83019 through R. 103-83322.

### **103-83827. Protests.**

A. In General. A protest is intended to advise the Commission and all parties to a proceeding before the Commission of the fact and character of the protestant's objection to part or all of the subject matter of the proceeding. The filing of a protest does not make the protestant a party of record. The protest will be placed in a public file associated with, but not part of the formal record, and will be available for such further exploration of the substantive matters raised therein by the ~~Commission staff~~ Office of Regulatory Staff and other parties as may be appropriate.

B. Form of Protests. No specific form of protest shall be required. The letter or writing should contain the name and address of the protestant, the proceeding or matter to which the protest is addressed, a concise statement of the protest, and whether the protestant wishes to make an appearance at a hearing, if scheduled.

### **103-83928. Amendments.**

Any modification or supplement to a pleading shall be deemed an amendment to the pleading, and shall comply with the particular requirements of content and form for the type of pleading so amended. Upon its own motion or upon motion duly filed by a party of record, the Commission may for good cause decline to permit, or may strike in whole or in part, any amendment. No amendment to a pleading may be filed within ten (10) days prior to the commencement of or during a hearing unless directed or permitted by the Commission or presiding officer after opportunity for all parties of record to be heard thereon.

### **103-84029. Motions.**

A. ~~Certain m~~ Motions, except those made during hearings, will be reduced to writing and filed with the ~~Executive Director~~ Chief Clerk at least ten (10) days prior to the commencement of a

hearing. ~~Such motions shall include motions for a special appearance, motions to object to the jurisdiction of the Commission, and motions to strike a portion of a pleading filed by any party in a proceeding.~~ Responses to such motions are due within ten days after service of said motions. Replies to responses to motions shall be filed with the Commission within five days of service of the response. These times may be modified by order of the Commission or its designee for good cause. Written motions to quash a subpoena will be made pursuant to R. 103-85032G.

B. The Commission, in its discretion and upon due notice to all parties of record, may entertain oral argument and response on prefiled motions in advance of the scheduled hearing in the proceeding to which the motions pertain. Otherwise, such argument and response shall be made at the commencement of the hearing. The presiding officer may make a ruling upon such motion at the completion of oral argument, at the conclusion of the hearing, or in the written order making disposition of the subject matter of the proceeding.

#### **103-84130. Filing and Service of Pleadings.**

All pleadings shall be filed with the ~~Executive Director~~ Chief Clerk of the Commission and served on the Office of Regulatory Staff.

~~A. Service of Applications. If a person other than the applicant is named in an application, the Executive Director will cause to be mailed to that person a copy of the notice of filing within ten days of the filing date. The person, other than the applicant, shall file its answer, if required, within twenty days of the receipt of the notice of filing.~~

#### **B. Service of Complaints and Answers.**

(1) A complainant requesting a hearing shall file the complaint with the ~~Executive Director~~ Chief Clerk. The complainant, on behalf of the Chief Clerk, may serve the complaint in conformance with the South Carolina Rules of Civil Procedure and shall furnish proof of service to the Chief Clerk within ten days of service. In the alternative, the Executive Director Chief Clerk shall mail a copy of the complaint to the defendant at the address provided in the defendant's last annual report filed with the Commission or at such other address as may be known if there is no annual report, within 14 days of filing. The complainant shall inform the Chief Clerk as to which method of service is to be employed at the time of the filing of the complaint.

(2) The defendant shall serve its answer on the complainant and shall file its answer with certification of service with the Commission within 30 days of receipt of the complaint, unless an extension of time is granted for good cause shown. Any defendant failing to file its answer within such period, unless an extension of time is granted, shall be deemed in default and all relevant facts stated in such complaint may be deemed admitted.

#### **C. Service of Petitions and Answers.**

(1) If a person other than the petitioner is named in a petition for a declaratory order or in a petition for a rule to show cause, ~~the petitioner, on behalf of the Chief Clerk, may serve the petition in conformance with the South Carolina Rules of Civil Procedure and shall furnish proof of service to the Chief Clerk within ten days of service. In the alternative, the Executive Director~~ Chief Clerk shall cause a copy of the petition to be mailed to such named person at the address provided in the defendant's last annual report filed with the Commission or at such other address as may be known if there is no annual report within 14 days of the filing of the petition. The petitioner shall inform the Chief Clerk as to which method of service is to be employed at the

time of the filing of the petition.

(2) The person named in a petition for a declaratory order or in a petition for a rule to show cause shall serve its answer on the petitioner and shall file its answer with certification of service with the ~~Executive Director~~ Chief Clerk within 30 days of the receipt of the petition from the ~~Executive Director~~ Chief Clerk unless an extension of time is granted for good cause shown.

(3) A person filing a petition to intervene or a party of record filing a petition for rehearing or reconsideration shall file the petition with certification that service of the petition has been made on all parties of record. The ~~Executive Director~~ Chief Clerk shall make available to the person seeking to intervene a service list consisting of the names of all parties of record.

D. Service of Amendments. Any amendment to a pleading shall be served and answered, if applicable, according to the requirements specified herein for the type of pleading sought to be amended.

#### **103-84231. Computation of Time.**

~~Except as otherwise provided by law, computation of the time period for mailing or serving a pleading shall not include the actual day of the filing of the pleading with the Commission, but the last day of the required time period shall be included unless that day is a Saturday, Sunday or legal holiday. The computation of time shall be governed by Rule 6 of the South Carolina Rules of Civil Procedure.~~ Extensions of time may be granted by the Commission for good cause shown.

### **SUBARTICLE 5**

#### **SUBPOENAS; INTERROGATORIES; DEPOSITIONS; DATA REQUESTS**

#### **103-85032. Subpoenas and Subpoenas Duces Tecum.**

~~A subpoena or subpoena duces tecum may be issued under the signature of the Executive Director. Subpoenas and subpoenas duces tecum shall show at whose instance they are issued.~~

~~A. Subpoenas Duces Tecum. Unless directed by the Commission upon its own motion, a subpoena to compel a witness to produce documentary evidence will be issued only upon written request to the Executive Director showing general relevance and reasonable scope of the evidence sought, which request must also specify with particularity the books, papers, or documents desired, and the facts expected to be proved thereby. Provided, however, that for good cause shown, in lieu of written request, the request for such a subpoena may be made orally upon the record to the presiding officer at the hearing.~~

~~B. Subpoenas. A request for issuance of a subpoena, other than to compel the production of documentary evidence, may be made either by letter addressed to the Executive Director or orally upon the record to the officer presiding at the hearing.~~

~~C. Service. The original subpoena or subpoena duces tecum shall be exhibited to the individual served, and a copy thereof shall be delivered to him by the individual making service.~~

~~D. Proof of Service. The individual serving the subpoena or subpoena duces tecum shall make affidavit thereof, stating the date, time and manner of service and return to the Executive Director~~

~~such affidavit on, or with, the original subpoena or subpoena duces tecum in accordance with the form thereon. In case of failure to make service, the reasons for failure shall be stated on the original subpoena or subpoena duces tecum. The written acceptance of service of a subpoena or subpoena duces tecum by the person named therein shall be sufficient without other evidence of such service. The original subpoena or subpoena duces tecum, bearing or accompanied by the required affidavit or acceptance of service, shall be returned forthwith to the Executive Director.~~

~~E. Time. No subpoena or subpoena duces tecum will be issued, without good cause shown, less than 24 hours prior to the date that the individual served with the subpoena or subpoena duces tecum is required to act unless the individual being served desires to waive all or any portion of the 24 hours.~~

~~F. Enforcement. The Commission by its counsel may seek the enforcement of a subpoena or subpoena duces tecum by requesting that the Court of Common Pleas, or a judge thereof, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such court or a refusal to testify therein.~~

~~G. Motion to Quash. Any individual who is compelled to act by force of subpoena or subpoena duces tecum and who objects thereto shall file written motion to quash, setting forth the reasons the subpoena or subpoena duces tecum should not be obeyed, or make an oral motion at the hearing, stating the reasons the subpoena or subpoena duces tecum should not be obeyed. Time permitting, the Commission will, by order or otherwise, rule on the motion to quash a subpoena or subpoena duces tecum prior to the hearing. If time prevents such ruling, the presiding officer may rule on such motion at the commencement of the hearing provided such motion is renewed at that time. — Subpoenas and Subpoenas Duces Tecum shall be issued and served in a manner consistent with the South Carolina Rules of Civil Procedure.~~

### **103-85133. Written Interrogatories and Request for Production of Documents and Things.**

A. Any material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding.

B. Unless under special circumstances and for good cause shown, written interrogatories shall not be served less than 10 days prior to the date assigned for commencement of hearing. Any party of record may serve upon other parties or parties of record written interrogatories to be answered by the party served. If the party served is a public or private corporation, partnership, association, or governmental agency, any officer or agent who possesses the desired information may respond to the interrogatories. Copies of interrogatories served shall also be filed with the ~~Executive Director~~ Chief Clerk. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the individual making them and subscribed by an appropriate verification. Objections are to be signed by the authorized representative or individual making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party of record submitting the interrogatories, but not less than ~~10~~ 20 days after the service thereof, unless the time is extended by the Commission for good cause shown. ~~Copies of answers and objections, if any, shall be filed with the Executive Director of the Commission.~~

C. Unless under special circumstances and for good cause shown, requests for production of

documents and things shall not be served less than 10 days prior to the date assigned for commencement of hearing. Any party of record may serve upon other parties or parties of record requests for production of documents and things to be answered by the party served. If the party served is a public or private corporation, partnership, association, or governmental agency, any officer or agent who possesses the desired information may respond to the requests for production of documents and things. Copies of requests for production of documents and things served shall also be filed with the Chief Clerk. Each request for production of documents and things shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the individual making them and subscribed by an appropriate verification. Objections are to be signed by the authorized representative or individual making them. The person upon whom the requests for production of documents and things have been served shall serve a copy of the answers and objections within the time period designated by the party of record submitting the requests for production of documents and things, but not less than 20 days after the service thereof, unless the time is extended by the Commission for good cause shown.

**103-85234. Depositions.**

Any party of record to a proceeding may, by written request, ask the Commission or its designee for leave to take the testimony of any witness by deposition. The request shall set forth the facts the requesting party seeks to establish by the deposition. Such written request shall be filed with the Commission at least 10 days prior to the commencement of the scheduled hearing. The requesting party shall give notice by providing a copy of the written request to each party of record to the proceeding. If the Commission or its designee deems the request meritorious, it may issue an Order designating the individual whose deposition may be taken, specifying the subject matter of the examination, and setting forth the time and place of such deposition, and whether it shall be written or oral examination. All costs incidental thereto shall be paid by the party desiring such deposition. If the request is not deemed meritorious, the written request shall be denied by Order or otherwise.

**103-853. Data Request.**

~~The Commission staff, in order to perform statutory duties assigned to the Commission, may request that a party provide certain data and information on various matters at issue in a formal proceeding. This data request, when filed, becomes available for public inspection and copying as provided for in R. 103-804Y(3). In submitting data request staff shall follow the procedure established in R. 103-804X.~~

**103-85435. Other Discovery Procedures**

The S. C. Rules of Civil Procedure govern all discovery matters not covered in Commission Regulations 103-850 through 103-852.

## **SUBARTICLE 6**

### **HEARINGS**

**103-86036. How Hearings are Set.**

~~In formal proceedings,~~ The Commission will assign a time and place for hearing and shall give

notice thereof as required by law.

**103-86137. Hearing Calendar.**

The hearing calendar will be posted in the office of the ~~Executive Director~~ Chief Clerk of the Commission and shall be available for inspection by the public during the office hours of the Commission. ~~Formal~~ Proceedings pending upon this calendar will be heard in their order of assignment, so far as practicable, at the times and places fixed, provided, however, in its discretion, with or without motion, the Commission may, at any time with reasonable notice to the parties, advance or postpone any ~~formal~~ proceeding on the hearing calendar.

**103-86238. Continuance.**

Any party of record desiring a continuance shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such continuance come to its knowledge, notify the ~~Executive Director~~ Chief Clerk, stating in detail the reasons why such continuance is necessary. Unless good cause is shown, no such continuance shall be granted.

**103-86339. Prehearing Conferences.**

A. Purposes. Upon written notice by the Commission in any ~~formal~~ proceeding, parties of record or their authorized representative may be directed to meet before a designated staff member at a specified time and place for a conference, prior to a hearing, for the purpose of formulating issues, and considering:

- (1) The simplification of issues;
- (2) The necessity or desirability of amending the pleadings for the purposes of clarification, amplification or limitation;
- (3) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (4) Limitations on the number and consolidation of the examination of witnesses;
- (5) The procedure at the hearing;
- (6) The distribution of written testimony and exhibits to the parties prior to the hearing;
- (7) Any other matters as may aid in the disposition of the proceeding, or settlement thereof.

B. Report of Stipulations. Following the prehearing conference, a proposed Report of Stipulations, reciting the action taken at the conference, amendments allowed to the pleadings, if any, and agreements, if any, made by the parties of record concerning all of the matters considered, shall be provided to the parties of record or their authorized representatives for approval. If no objection to the Report of Stipulations is filed within ten days after the date such Report is mailed, it shall be deemed to be approved. This Report, when approved, shall limit the issues to be heard at the hearing to those not disposed of by admissions or agreements of the parties or their authorized representative and will control the subsequent course of the formal proceeding unless modified at the hearing to prevent manifest injustice.

**103-86440. Consolidated Hearings.**

The Commission, upon its own motion or upon motion by any party, may order two or more ~~formal~~ proceedings involving a similar question of law or fact to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by such procedure.

**103-86541. Presiding Officer.**

A. In General. When evidence is to be taken in a ~~formal~~ proceeding before the Commission, any Commissioner or any hearing examiner designated by the Commission may preside at the hearing.

B. Powers and Duties of Presiding Officer. A presiding officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order; and shall possess all powers necessary to that end, including the following:

- (1) To administer oath and affirmations;
- (2) To order subpoenas issued and to provide for other methods of discovery;
- (3) To receive evidence and rule upon all objections and motions which do not involve final determination of proceedings;
- (4) To take such other action as may be necessary and appropriate to the discharge of duties consistent with the statutory authority or other authorities under which the Commission functions.

C. Report of Presiding Officer. When a majority of the Commissioners do not hear a ~~formal~~ proceeding or read the record thereof, the presiding officer shall mail to the parties of record a proposed Order. The proposed Order shall contain a statement of facts relied upon in formulating such Order and each issue of fact or law necessary to it. Any party of record will then have ten days in which to file exceptions, present briefs, and file written requests for oral argument to the Commission, if it is desired to do so. If exceptions and briefs are filed within the prescribed time period, the Commission will consider the points raised therein and will issue its Order based upon the record of the formal proceeding, the proposed Order, and the exceptions and briefs filed. If a written request for oral argument is filed, the Commission will establish a date for such oral argument to be heard and will notify all parties of record as to date, time and place for such argument. Thereafter, the Commission will issue its Order based upon the record of the formal proceeding, the proposed Order, any exceptions and briefs filed, and the oral argument presented. If no exceptions, briefs, or written requests for oral argument are received within the prescribed ten days, the Commission will issue its Order based upon the record of the formal proceeding and the proposed Order.

**103-86642. Order of Procedure.**

A. ~~Commission~~ Investigations. Upon an investigation initiated by the Commission Office of Regulatory Staff or by staff on motion of the request of the Commission, evidence in a ~~formal~~ proceeding will ordinarily be received in the following order:

- (1) ~~Commission staff~~ Office of Regulatory Staff;

(2) Respondent;

(3) Other parties.

B. Applications and Petitions. Evidence will ordinarily be received upon applications and petitions in the following order:

(1) Applicant or Petitioner;

(2) Other parties;

(3) ~~Commission staff~~ Office of Regulatory Staff.

C. ~~Formal~~ Complaint. Evidence will ordinarily be received upon complaints in the following order:

(1) Complainants;

(2) Respondents;

(3) Other parties;

(4) ~~Commission staff~~ Office of Regulatory Staff.

**103-86743. Standard of Conduct.**

All individuals acting in a representative capacity in ~~formal~~ proceedings before the Commission shall conform to the standards of ethical conduct required of attorneys before the courts of this State. If any such individual does not conform to such standards, the Commission may decline to permit such individual to act in a representative capacity in any proceeding before the Commission.

**103-86844. Failure to Attend Designated Hearing.**

A. At the time and place set for hearing, if an applicant, petitioner, or complainant fails to attend personally or through an authorized representative without having obtained a continuance in the manner specified in R. 103-86238, the Commission may dismiss the petition, application, or complaint with or without prejudice or may, upon good cause shown, recess such hearing for a further period to be set by the Commission to enable such applicant, petitioner, or complainant to attend.

B. Parties of record or their authorized representative shall be present during all proceedings of any scheduled matter pending before the Commission except upon leave of the presiding officer.

**103-86945. Witnesses.**

A. In General. Witnesses shall be examined orally. Witnesses presenting testimony shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

B. Cumulative Testimony Restricted. The presiding officer may limit the number of witnesses



whose testimony may be merely cumulative. In order to enforce this section, the presiding officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered.

C. Prepared Statements and Exhibits. A witness may read into the record, as his direct testimony, statements of fact or expressions of his opinion prepared by him, or written answers to interrogatories of counsel. A prepared statement of a witness may also be received as an exhibit. All parties of record, insofar as it is practicable, should prefile with all other parties of record copies of prepared testimony and exhibits which the party of record proposes to use during a hearing. In ~~formal~~ proceedings involving utilities, the Commission shall require any party and ~~staff the Office of Regulatory Staff~~ to file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing. In ~~formal~~ proceedings involving companies other than utilities, the Commission may require any party and staff to file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing. When prepared testimony and exhibits are prefiled with the Commission, twenty-five copies, unless otherwise specified, of such testimony and exhibits must be furnished to the Commission for the use of the Commission and Staff.

#### **103-87046. Evidence.**

A. In General. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the Court of Common Pleas shall be followed. ~~When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~ Effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

B. Reception and Ruling on Proffered Evidence. The presiding officer shall rule on the admissibility of all evidence and shall otherwise control the reception of evidence so as to confine it to the issues in the hearing.

C. Notice of Cognizable Facts. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties of record shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. Parties shall be afforded an opportunity to contest the material proposed to be noticed.

#### **103-87147. Documentary Evidence.**

A. Commission Files. In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or file containing the matter so offered.

B. Records in Other Proceedings. If the transcript, or any portion thereof, of another ~~formal~~ proceeding before the Commission is desired to be introduced into the formal record at a subsequent hearing, a true copy of the portion desired must be presented.

C. Abstracts of Documents. When documents are numerous, such as freight bills or bills of lading, and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract of relevant data of such documents shall be prepared in an orderly manner and offered as an exhibit, giving other parties to the proceeding reasonable opportunity to examine both the abstract and the documents.

**103-87248. Exhibits.**

A. SIZE OF EXHIBITS. Except by special permission of the presiding officer, no prepared exhibits offered as evidence shall be of greater size, when folded, than 8 1/2 inches by 11 inches.

B. Copies of Exhibits. When exhibits are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits should also be prepared to furnish a copy to each Commissioner sitting and the presiding officer, each party of record, and the staff, unless such copies have been previously furnished or the presiding officer directs otherwise. Whenever practicable, the parties should exchange copies of exhibits which they propose to use prior to the hearing.

C. Marking of Exhibits. All exhibits shall be marked numerically in the order of identification.

**103-87349. Objections to the Introduction of Evidence.**

A. In General. Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later rulings by the presiding officer. The presiding officer, in his discretion, either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

B. Offers of Proof. When the presentation of any evidence is objected to and such objection is sustained by the presiding officer, the proponent of the evidence may request that she or he be allowed to present an offer of proof for the formal record. Such offer of proof shall consist of a statement of the substance of the evidence to which objection has been sustained, or if the excluded evidence consists of evidence in documentary or written form, a copy of such evidence shall constitute the offer of proof.

**103-87450. Transcripts.**

A. In General. The Commission will cause to be made a record of all ~~formal~~ proceedings.

B. Copies of Transcript. Copies of the typewritten transcript of any ~~formal~~ proceeding may be obtained from the hearing reporters upon request and after payment of the applicable fee.

**103-87551. Briefs or Proposed Orders.**

A. Due Date. The presiding officer shall fix the time for filing and service of briefs or proposed orders. ~~Without special permission, however, the time in which to file briefs shall not exceed 30 days from the close of the hearing.~~

B. Table of Contents and Citations. A brief of more than 20 pages shall contain a table of contents

showing arguments presented with page references and a list of citations, alphabetically arranged with references to the pages where they appear.

C. Scope of Briefs or Proposed Orders. Briefs should contain:

- (1) A concise statement of the case;
- (2) An abstract of the evidence relied upon, preferably assembled by subjects;
- (3) Factual and legal arguments, or, if ~~desired~~, a proposed Order, ~~together with~~ reasons and authorities therefore.

D. Exhibit Reproduction. Exhibits may be reproduced in an appendix to the brief. Analysis of such exhibits should be included in the abstract of evidence under the subjects to which they pertain.

E. Filing and Service. Briefs or proposed orders must be filed with the ~~Executive Director~~ Chief Clerk and served on parties of record on or before the date fixed. If not filed on or before the date fixed, the brief will not be received without permission from the Commission or the presiding officer. All briefs shall be accompanied by a certificate showing service upon all parties of record or their authorized representatives who appeared at the hearing. Ten copies of each brief shall be furnished for the use of the Commission and staff.

**103-87652**. Service of Orders.

All Orders representing final disposition of a ~~formal~~ proceeding shall be filed with the ~~Executive Director~~ Chief Clerk who shall serve copies thereof upon all parties of record or their authorized representative. Such service shall be by certified mail, registered mail, or by delivery to the parties or their attorneys, as may be appropriate.

## SUBARTICLE 7

### COMMISSION ORDERS

**103-88053**. Finality of Decision.

All ~~formal~~ proceedings before the Commission shall be disposed of by issuance of an Order as defined in R. 103-804TK served upon all parties of record.

A. Effective Date of Orders. Commission Orders shall take effect and become operative ~~upon the date of issuance~~ when served by registered or certified mail, unless otherwise ~~provided~~ designated, and shall continue in force and effect either for a period which may be designated therein or until rescinded, modified or amended by the Commission. If an Order cannot be complied with within prescribed time limit, the Commission may, ~~upon application~~, grant such additional time as in its judgment is reasonably necessary to comply with the Order.

B. Rescinding, Modifying, Amending Order or Decision. The Commission may rescind, modify, or amend any Order. If the rescission, modification or amendment pertains to other than clerical errors or omissions, parties of record shall be provided notice and opportunity to be heard. Any Order rescinding, modifying or amending a prior Order shall have the same effect as is provided

for in original Orders, but no such Order shall affect the legality or validity of any acts done pursuant to the original Order before notice of such rescission, modification, or amendment.

**103-881~~54~~**. Petition for Rehearing or Reconsideration.

Unless otherwise provided by law, no cause of action shall accrue in any court of competent jurisdiction to vacate or set aside any Order of the Commission, either in whole or in part, unless a petition for rehearing or reconsideration and proof of service are filed with the Commission, and an Order has been issued disposing of the matter.

A. Form, Contents of Petition for Rehearing or Reconsideration. All petitions for rehearing or reconsideration shall conform to R. 103-836~~25~~.

B. Time limit for filing a petition for rehearing or reconsideration. Except as otherwise provided by S. C. Code Ann., Section 58-5-330, 58-9-1200, 58-11-550, 58-27-2150 (1976), any party of record may, within 20 days after the date of receipt of Order, petition the Commission for rehearing or reconsideration. A Petition for Reconsideration shall be subject to the same statutory parameters as a Petition for Rehearing.

C. Action by the Commission. The Commission must act upon the petition for rehearing or reconsideration within thirty (30) days after such petition is filed except as otherwise provided by S. C. Code Ann., Section 58-5-330, 58-9-1200, 58-11-550, 58-27-2150 (1976). Failure to act within this time period shall be deemed a denial of the relief sought in the petition.

D. Effect of Filing a Petition. Filing a petition shall not excuse or delay compliance with an Order issued by the Commission, unless specifically provided by the Commission.

**103-882~~55~~**. Presiding Officer's Proposed Report.

In the event a presiding officer hears a matter before the Commission, the parties of record may, by stipulation, waive the preparation of a proposed report. Parties of record may file exceptions to the proposed report pursuant to R. 103-865~~41~~C.

**103-883~~56~~**. Appellate Review.

A. In General. After denial of rehearing, a party of record may appeal a Commission Order to the appropriate judicial forum pursuant to applicable provisions of law.

B. Stay of Commission Order Pending Review. Except as otherwise provided by law, an appeal from an Order of the Commission shall not of itself stay or suspend operation of the Order of the Commission.

C. Transcript of Testimony. A transcript of the proceeding will be furnished upon request directed to the Commission's hearing reporters, stating the number of copies desired, the person to be billed and the person to whom the transcript is to be sent.

D. Record on Appeal. In any action to review a final decision of the Commission, the record shall consist of all items set forth in R. 103-804~~6E~~.

E. Stipulations. The Commission, and any party of record appealing a Commission Order, may stipulate that a certain question or questions and a specified portion of the evidence shall be

certified to the Court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on view.

F. Priority. Cases appealed from the Commission shall have priority where such is given by statute.

**103-88457. Penalty Provisions.**

A. In General. Any fine or penalty assessed against any person as allowed by statute, may be imposed in accordance with applicable provisions of law and these rules as established by the Commission.

B. Calculation of Fine or Penalty. The fine or penalty will be incurred and will accrue each day with each day considered a separate breach or violation.

C. Payment of Fine or Penalty. A fine or penalty assessed pursuant to the provisions of these rules shall be paid immediately upon demand by certified check made payable to the State of South Carolina. Failure to honor this demand within ten days shall result in a filing in the appropriate county office or offices, for collection of such fine or penalty as provided by law.

D. Disbursement of Fine or Penalty. All fines or penalties assessed by the Commission shall go into the general funds of the State unless otherwise provided by law.

**103-88558. General Provisions.**

A. Additional Hearings. The Commission may, in addition to other hearings as provided for by rule or statute, conduct such other hearings as may be required in the administration of the Commission's power and duties.

B. Construction. If any provision of these rules or the application thereof is held invalid, the remainder of the rules or other application of such rules shall not be affected.

**103-88659. Emergency Procedures.**

A. When it appears to the Office of Regulatory Staff ~~Commission Staff~~ that a utility is planning to disconnect its service to a customer(s) in violation of the Commission's Rules and Regulations and under circumstances which prevent the full Commission from meeting to address the issue, upon the request of the Office of Regulatory Staff ~~Commission Staff~~, any one Commissioner may issue an Order on behalf of the Commission restraining and/or enjoining a utility from disconnecting service or requiring the utility to maintain the status quo with its customer(s) until further Order of the Commission. Thereafter, at the next scheduled Commission meeting with proper legal notice, the full Commission shall consider the Order of the single Commissioner and take such action on the single Commissioner's Order as it deems appropriate.

B. When it appears to the Office of Regulatory Staff ~~Commission Staff~~ that a utility has disconnected a customer's (s') service in violation of the Commission's Rules and Regulations and under circumstances which prevent the full Commission from meeting to address the issue, upon the request of the Office of Regulatory Staff ~~Commission Staff~~, any one Commissioner may issue an Order on behalf of the Commission requiring the utility to reconnect the service and maintain that status quo until further Order of the Commission. Thereafter, at the next scheduled Commission meeting with proper legal notice, the full Commission shall consider the Order of

the single Commissioner and take such action on the single Commissioner's Order as it deems appropriate.